

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

KARL STORZ ENDOSCOPY-AMERICA,
INC.,

Plaintiff,

v.

STRYKER CORPORATION, et al.,

Defendants.

Case No. [14-cv-00876-RS](#) (JSC)

**ORDER REGARDING PLAINTIFF'S
MOTION TO COMPEL ATTORNEY
WORK PRODUCT**

Re: Dkt. No. 300

Defendants have asserted an advice of counsel defense. Plaintiff moves to compel certain attorney work product withheld on privilege grounds. After reviewing the parties' submissions and supporting evidence, the Court DENIES the motion. As the Federal Circuit has held:

Work-product waiver extends only so far as to inform the court of the infringer's state of mind. Counsel's opinion is not important for its legal correctness. It is important to the inquiry whether it is "thorough enough, as combined with other factors, to instill a belief in the infringer that a court might reasonably hold the patent is invalid, not infringed, or unenforceable." *Ortho Pharm. Corp. v. Smith*, 959 F.2d 936, 944 (Fed.Cir.1992). It is what the alleged infringer knew or believed, and by contradistinction not what other items counsel may have prepared but did not communicate to the client, that informs the court of an infringer's willfulness.

In re Echostar Comm. Corp., 448 F.3d 1294 (Fed. Cir. 2006). The Court finds that the withheld attorney work product was not communicated to Stryker and thus does not inform the court or the jury of Stryker's willfulness.

This Order disposes of Docket No. 300.

IT IS SO ORDERED.

Dated: September 8, 2017

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JACQUELINE SCOTT CORLEY
United States Magistrate Judge